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ABDUL WAHAB JAM JAM

v.

ABDUL WAHAB ADBULLAH & ANOR

B

HIGH COURT MALAYA, KUANTAN
MOHAMED APANDI ALI J
[CIVIL APPEAL NO: 12-66-2002]
14 DECEMBER 2007

C ***ROAD TRAFFIC:*** *Negligence - Motorcyclist colliding into rear of van - Conflicting versions of how accident happened - Van driver's evidence more consistent as his police report was made on day of accident whereas motorcyclist's police report was made two months after accident - No brake marks at scene of accident to support motorcyclist's allegation of*
D *sudden braking by van driver*

ROAD TRAFFIC: *Licence - Driving motor vehicle without licence - Whether not having a valid driving license in itself means that driver is negligent - Whether indicates driver not competent - Motorcyclist admitted*
E *guilty for negligence driving under r. 10 - Whether motorcyclist 80% liable for accident*

DAMAGES: *Personal injuries - Intra-abdominal injury (Ileum perforation and sigmoid- colon perforation) and compound Grade I Fracture of Right Radius and Right Ulna - Whether quantum of*
F *RM60,000 adequate*

The accident that was the crux of this appeal occurred between a motorcycle ridden by the second respondent and a motor van driven by the appellant, whereby the said motorcycle hit the left
G rear of the said motor van. As a result of the accident, the second respondent suffered intra-abdominal injury (Ileum perforation and sigmoid- colon perforation) and compound Grade I Fracture of Right Radius and Right Ulna. The second respondent did not own a valid driving license and was charged in court for negligence
H driving under r. 10 whereby she pleaded guilty and was fined. Both parties gave conflicting versions as to how the accident occurred. It was alleged by the second respondent that the accident occurred when the appellant suddenly overtook the second respondent and then abruptly stopped in front of her
I causing her to be unable to stop on time and thus hit the back of the motor van. The appellant's version on the other hand was that he was driving along when suddenly he heard a loud bang from the back of his motor van and when he stopped to check,

he saw the motorcycle ridden by the second respondent with her lying on the road. He denied that he had overtaken the motor cycle and also that he had abruptly stopped his motor van. The Sessions Court Judge had held the appellant 100% liable for the accident and awarded the second respondent RM60,000 for her injuries. The appellant appealed against the 100% liability and also over the quantum of damages.

Held (allowing the appeal against the 100% liability of the appellant and dismissing the appeal as regard to quantum):

(1) Analyzing the police report and the independent evidence by the police and comparing it with the testimony of the second respondent and the appellant in court, the police report by the appellant was more consistent with his story in court. This was so because the appellant's police report was made on the day of accident itself whereas the second respondent's police report was made about two months after the accident. There were also no brake marks on the road of the accident scene to support the story of sudden braking by the appellant as alleged by the respondents. (paras 27 & 28)

(2) The second respondent was not a competent driver to ride the said motorcycle as she did not have a valid driving license. Although not having a valid driving license in itself does not mean that the driver is negligent, nevertheless, the second respondent had admitted guilty for negligence driving when she pleaded guilty when charged in court under r. 10 for the said offence. The second respondent had significantly contributed to the occurrence of the accident and she was 80% liable for the accident. (paras 29 & 30)

(3) The second respondent was severely injured and these injuries had caused her much pain and suffering. The quantum of RM60,000 (based on 100% liability) as awarded by the trial judge was adequate and in the circumstances was not excessive. (paras 32 & 35)

Case(s) referred to:

Abdul Mokthi Hj Ahmad v. Idris Ibrahim [1977] 2 MLJ 85 ***(refd)***

Chai Kah Sim v. Ishak Saad [1986] 1 CLJ 537; [1986] CLJ (Rep) 80 SC ***(refd)***

Chu Kim Sing & Anor v. Abdul Razak Amin [1999] 4 CLJ 448 HC ***(refd)***

Kamaruddin Mohd Nor & Anor v. Soon Soo Moe & Anor [1998] 4 CLJ Supp 301 HC ***(refd)***

Lai Yew Seong v. Chan Kim Sang [1987] 1 CLJ 351; [1987] CLJ (Rep) 151 SC ***(refd)***

A *Lee Ewe Teik v. Ariffin Hussain [1990] 2 CLJ 191; [1990] 2 CLJ (Rep) 332 HC* ***(refd)***
Liau Mui Mui v. Dr R Venkat Krishnan [1999] 1 CLJ 207 HC ***(refd)***
Mahalingam Varathan v. Chan Chee Tuck [1987] 2 MLJ 20 ***(refd)***
Miskinah Jaya & Ors v. Mohamed Salleh & Anor [1983] 2 CLJ 267; [1983] CLJ (Rep) 630 HC ***(refd)***
B *Nicholas Arthur Nock v. Mohamed Sulieman [1976] 1 MLJ 100* ***(refd)***
Phuah Jee Suan v. Nila Vasupillai [1973] 1 MLJ 186 ***(refd)***
Tabarani Mohd Arshad & Anor v. Chan Tenn Yeu [1999] 3 CLJ 188 HC ***(refd)***

C *Reported by Amutha Suppayah*

JUDGMENT

Mohamed Apandi Ali J:

D **[1]** This is an appeal against the decision of the Sessions Court Judge that held the appellant to be 100% liable for an accident between the motor van driven by the appellant and the motorcycle ridden by the second respondent. The Sessions Court Judge had also made the following order for damages and cost:

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	RM
– Special Damages (agreed)	1,220.00
– General Damages	
F – Ileum Perforation & Sigmold-colon Perforation (Intra-abdominal injury)	60,000.00
– Compound Grade I Fracture of Right Radius & Ulna	18,000.00
G	79,220.00
– Costs	
– Fees of filing of summons	100.00
H – Fees for filing the bundle of pleadings and bundle of documents	8.00
– Costs of preparing 3 sets of bundle of documents of 21 sheets each in total of 63 sheets photocopy charges of RM0.30 each	18.90

– Costs of preparing 3 sets of bundle of pleadings of 13 sheets each in total of 39 sheets photocopy charges of RM0.30 each	11.70
– Fees to file sepeona to Sarjan Shamsuddin bin Ali	8.00
– Witness allowance to Sarjan Shamsuddin bin Ali from IPD Traffic Rompin	150.00
– Costs for lawyer's attendance to court for trial on – 23 March 2001, 9 February 2002 & 29 August 2002 at the rate of RM25 per day	75.00
– Costs of prosecution at RM79,220	1,175.00
– Costs of counsel at RM79,220	4,650.00
– Costs of judgment	100.00
	6,296.60

[2] The Sessions Court Judge had also ordered the appellant to pay interest at the rate of 4% per annum over the special damages from the date of the accident to the date of judgment and 8% per annum thereafter until full payment. And also interest at the rate of 8% per annum over the general damages from the date the summons was served until full payment.

[3] The appellant is now appealing against the decision over his 100% liability and also over the quantum of damages of RM60,000 awarded by the Sessions Court Judge for the Ileum Perforation & Sigmold-colon Perforation (Intra-abdominal injury) suffered by the second respondent.

Brief Facts Of The Case

[4] The accident that was the crux of this appeal occurred on 17 October 1998 at about 7.30am at Jalan Belakang Felda Keratong, Bandar Tun Razak, Rompin between a motorcycle bearing registration number JCX 5119 ridden by the second respondent and a motor van bearing registration number JEL 1869 driven by the appellant, whereby the said motorcycle hit the left rear of the said motor van.

[5] As the result of the accident, the second respondent had suffered the following injuries:

1. Intra-abdominal injury (Ileum perforation and sigmoid-colon perforation); and
2. Compound Grade I Fracture of Right Radius and Right Ulna.

[6] She was admitted to the hospital twice. The first time was right after the accident on 17 October 1998. She was discharged on 16 November 1998. However, she was again admitted to the hospital on 6 January 1999 and was finally discharged on 17 January 1999.

(Refer: Medical report at p. 181 of the appeal record).

[7] The appellant however suffered no injuries.

[8] The second respondent does not own a valid driving license and was charged in court for negligence driving under r. 10 whereby she pleaded guilty and was fined RM150.

(Refer: p. 50-51 of the appeal record).

[9] Both parties gave conflicting versions as to how the accident occurred. It was alleged by the second respondent that the accident occurred when the appellant suddenly overtook the second respondent and then abruptly stopped in front of her causing her to be unable to stop on time and thus hit the back of the motor van.

[10] The appellant's version on the other hand was that he was driving along when suddenly he heard a loud bang from the back of his motor van and when he stopped to check, he saw the motorcycle ridden by the second respondent with her lying on the road. He denied that he had overtaken the motor cycle and also that he had abruptly stopped his motor van.

The Appellant's Case

[11] It was submitted by the appellant that the trial judge erred in fact by taking the respondents' version to be true and thus holding the appellant 100% liable for the occurrence of the accident.

[12] The appellant submitted that the following evidence was given during trial: A

1. That there were no brake marks at the accident scene;
2. Based on the damages to both vehicles, that the damages to the motor van were solely at its rear (refer: p. 50 of the appeal record); B
3. That the second respondent does not own any valid driving license; and
4. That the second respondent was charged in court for negligent driving where she pleaded guilty and was fined RM150. C

[13] The appellant submitted that based on the above evidence, the evidence by the second respondent that it was the sudden braking by the appellant that had caused the accident is clearly unsupported by any evidence and this fact cannot be accepted even on the balance of probabilities. D

[14] The appellant cited the following cases in support of its submission: E

1. *Abdul Mokthi bin Hj Ahmad v. Idris bin Ibrahim* [1977] 2 MLJ 85 (p. 77 of the appeal record).
2. *Lai Yew Seong v. Chan Kim Sang* [1987] 1 CLJ 351; [1987] CLJ (Rep) 151 (p. 79 of the appeal record). F
3. *Tabarani bin Mohd Arshad & Anor v. Chan Tenn Yeu* [1999] 3 CLJ 188 (pp. 71 & 84 of the appeal record).
4. *Lee Ewe Teik v. Ariffin bin Hussain* [1990] 2 CLJ 191; [1990] 2 CLJ (Rep) 332 (pp. 72 & 102 appeal record). G

[15] On the quantum, the appellant submitted that the amount of RM60,000 awarded by the trial judge for Ileum perforation and sigmoid-colon perforation is excessive as there were no medical report given to prove residual disabilities and there was also no evidence to show permanent disabilities. H

The Respondents' Case

[16] The respondents submitted that the cause of the accident was the sudden braking by the appellant, and thus the appellant is 100% liable for the accident. The respondents cited the following cases in support: I

A 1. *Kamaruddin Mohd Nor & Anor v. Soon Soo Moe & Anor* [1998] 4 CLJ Supp 301 (pp. 154-164 of the appeal record).

2. *Miskinah binti Jaya & Ors v. Mohamed bin Salleh & Anor* [1983] 2 CLJ 267; [1983] CLJ (Rep) 630 (pp. 122-127 of
B the appeal record).

3. *Nicholas Arthur Nock v. Mohamed bin Sulieman* [1976] 1 MLJ 100 (pp. 133-139 of the appeal record).

[17] The respondents further submitted that:

C

1. Based on the injuries suffered by the second respondent and the damages to the motorcycle and the motor van, the speed of the vehicle must be more than the speed of 60 m.p.h. as alleged by the appellant and the speed of 40 m.p.h. alleged by
D the respondent;

2. Based on the rough plan of the accident scene ie the road is a straight road and the motor van is a big size vehicle, it was impossible for the second respondent who was moving to suddenly hit the motor van unless the motor van had abruptly
E stopped moving; and

3. The fact that the second respondent has no valid driving license and that she was charged in court for it does not mean that she was negligent. The respondents had referred to the
F case of *Chu Kim Sing & Anor v. Abdul Razak bin Amin* [1999] 4 CLJ 448.

4. The Binghams Motor Claim Chart referred to by the appellant during trial cannot be used in this claim because the chart is
G not applicable in cases of sudden brake and also because the appellant had denied of doing such act.

[18] Based on the above, the respondents thus submitted that the liability of causing the accident is indeed 100% upon the
H appellant.

[19] With regard to the quantum, based on 2 medical reports by the doctors from Hospital Ampuan Hafzan, Kuantan (refer exhs. P1 and P2 at pp. 180 and 181 of the appeal record) that stated:

I 1. The second respondent was admitted to the hospital on the date of the accident and one emergency operation was performed on 18 October 1998;

2. "Primary ileac anastomosis" and "Hartman's procedure" was performed for the injury of "sigmoid colon perforation" of the second respondent;

3. After the surgery, the second respondent was ventilated in the ICU and was given an intensive supportive therapy;

4. The second respondent had gone through a stormy recovery process and after 37 days of treatment, the second respondent was finally recovered;

5. The second respondent had undergone another operation on 7 January 1999 for adhesiolysis and reversal of Hartman's procedure to achieve bowel continuity"; and

6. And for the second respondent's orthopaedic problem, a debridgement and closed manual reduction was performed.

[20] Case law cited by learned counsel for the respondent in support of the damages claimed are:

1. *Mahalingam a/l Varathan v. Chan Chee Tuck* [1987] 2 MLJ 20 (p. 108 of the appeal record); and

2. *Phuah Jee Suan v. Nila Vasupillai* [1973] 1 MLJ 186 (p. 147 of the appeal record).

[21] The respondents submitted that the amount of RM60,000 for the Ileum Perforation & Sigmold-colon Perforation (Intra-abdominal injury) by the trial judge is adequate and should not be reduced.

The Judgment

[22] Upon assessing the appeal record and the submission filed by both parties, the court makes the following findings:

Liability

[23] Both parties gave and maintained conflicting versions on how the accident occurred.

[24] The Federal Court in the case of *Chai Kah Sim v. Ishak bin Saad* [1986] 1 CLJ 537; [1986] CLJ (Rep) 80 have held clearly pointed out that in case of contradictory evidence, the court must look at other available evidence in order to assist him in making his finding;

The parties gave conflicting versions of the manner in which the accident occurred as noted by the trial Judge. According to the respondent, he was riding his motor-cycle about two feet from the left edge of the road and while negotiating the bend he collided against the rear off-side wheel of the oncoming lorry. After that, he could not remember anything else. On the other hand, the appellant testified when approaching the bend he saw the respondent coming straight at his lorry. He tried to swerve to the left to avoid a collision but the respondent's motor-cycle collided against the front of the rear off-side tyre of the lorry. In the light of the contradictory versions, the learned Judge took into consideration the other available evidence, *viz*., the sketch plan and photographs of the scene showing the positions of the two vehicles after the accident and the police reports lodged by both parties to assist him in making his finding. In our view, he has applied the correct test.

[25] In the present case, in the police report made by both parties (exhs. P3 and P6), the respondents had alleged that the appellant had abruptly braked that this had caused the accident, meanwhile the appellant had denied that he had braked abruptly and alleged that he was only driving along when without reason known to him, the second respondent's motorcycle hit his motor van from behind. And during their testimony, they have maintained their version of the story.

[26] The independent evidence given by the Investigating Officer, Sarjan Shamsuddin bin Ali who testified during trial were:

1. That based on the rough plan, both vehicles came from the same direction and were heading towards the same direction;

2. There are no brake marks from any vehicles at the accident scene; and

3. The rider of the motorcycle (the second respondent) does not have a valid driving license and was charged in court for negligent driving whereby she pleaded guilty and was fined RM150.

[27] Analyzing the police report and the independent evidence by Sarjan Shamsuddin and comparing it with the testimony of the second respondent and the appellant in court, this court finds that the police report (D6) by the appellant is more consistent with his story in court. This is so because D6 was made on the day of accident itself whereas the second respondent's police report (D3) was made about two months after the accident.

[28] Other than that, it has also been proven that there were no brake marks on the road of the accident scene to support the story of sudden braking by the appellant as alleged by the respondents. Furthermore, looking from the surrounding of the accident scene from the rough plan ie the road is of a straight lane and the fact that both vehicles came from the same direction and heading to the same direction, there is no possible reason for the appellant to brake suddenly to stop his motor van.

[29] It can also be seen from the independent evidence adduced that the second respondent is not a competent driver to ride the said motorcycle as she does not have a valid driving license. Although not having a valid driving license in itself does not mean that the a driver is negligent, nevertheless, in this case, the second respondent herself, on her own accord had admitted guilty for negligent driving when she pleaded guilty when charged in court under r. 10 for the said offence.

[30] In this regard, this court allowed the appeal against the 100% liability of the appellant and held that the second respondent had significantly contributed to the occurrence of the accident, whereby it is apportioned that she is 80% liable for the accident, as submitted by learned counsel for the appellant (see p. 169 of the appeal record).

Quantum

[31] As submitted and duly proven by the respondents, as the result of the accident, the second respondent had suffered the following injuries:

1. Intra-abdominal injury (Ileum perforation and sigmoid-colon perforation); and

2. Compound Grade I Fracture of Right Radius and Right Ulna.

[32] She was admitted twice to the hospital and had to undergo 2 surgical procedures. She also had to go through a tedious recovery process whereby she was ventilated in the ICU and was given an intensive supportive therapy. It can be clearly seen from here that she was severely injured and these injuries had caused her much pain and suffering.

[33] In the case of *Liau Mui Mui v. Dr R Venkat Krishnan* [1999] 1 CLJ 207;

The initial injuries suffered by the plaintiff are:

a) 1 cm tear in the fundus of the uterus over the left side.

b) Multiple perforations four in number in the rectum each about 1 cm in diameter.

c) Multiple lacerations three in the terminal ileum each tear measuring 2 cm x 3 cm going through entire wall of ileum.

d) The length of the small bowel involved was about 10 inches and there was one foot shortening of the small intestines.

e) Minimal bleeding from the anterior aspect of uterus.

f) Fair amount of faecal contamination in the peritoneum and fibrinous matter over the small bowel.

g) The ileum and the mesentery was oedematous and thickened.

The operation done on the plaintiff on 19 April 1980 included:

a) gut resection of ileum and to end anastomosis.

b) rectal perforations repaired.

c) transverse colostomy (loop colostomy) done.

d) drain inserted into recto uterine pouch.

e) the uterine perforation was repaired.

The plaintiff underwent a second operation for closure of colostomy on 17 June 1980 and was discharged on 21 June 1980. After the two initial operations on the plaintiff, the plaintiff was readmitted twice in the General Hospital. The first readmission was on 22 November 1980 wherein he was hospitalised for seven days and diagnosed to have acute intestinal obstruction due to adhesions. The second re-admission was on 13 May 1980 wherein she was hospitalised for ten days and a diagnosis of adhesion colic was made. The initial injuries to the plaintiff has also resulted in three scars, namely a colostomy scar, a subumbilical laparatomy scar and a small scar in the left illiac fossa represented by the previous drain site wound. Apart from the hospitalisation she was seen by SP2 as an outpatient. Sometimes the plaintiff came with abdominal pain, sometimes with complaints of diarrhoea, mostly related to abdominal pain with feeling of bloated stomach and passing of loose stools. The plaintiff kept on going back to see SP2 and sometimes said she felt like vomiting. For the first ten years the plaintiff went back to see SP2 quite frequently. SP2 stated that adhesions can recur at any time even 20 years after the operation. This is supported by exh. P20 at D on p. 148 which states that adhesions may present as obstruction 30 or more years after abdominal surgery. The plaintiff had complained of various symptoms of adhesion colic such as bloated

stomach, feeling like vomiting and diarrhoea. The plaintiff stated that for the first ten years the symptoms were very severe and she is still not normal, after the operation she lost 10 Ibs in weight, felt weak and could not do heavy work, after the operation she felt sad and pain all over her body, she could not leave the house because of the colostomy bag and could not wear fashionable clothes, and she also had problems with her sex life. In *Puspawangi bte Hassan v. Chou Hau [1993] Mallal's Digest para. 734 a sum of RM44,000 was awarded in 1992 for intra abdominal injury. In the case of Mahalingam a/l Varathan v. Chan Chee Tuck [1987] 2 MLJ p. 20 a sum of RM30,000 was awarded on 29 December 1986 for intra abdominal injury.*

On the evidence, to my mind, an award of RM40,000 under this head is adequate. (emphasis added)

[34] And in the case of *Phuah Jee Suan v. Nila Vasupillai* [1973] 1 MLJ 186:

The other matter which requires consideration is the question of changes in the value of money which has been often termed as the decrease in the purchasing power of the dollar or the increase in the cost of living over the years. Leaving authority aside, both principle and common sense require that the courts, when they assess an award of money, which is to compensate a plaintiff for the damage caused to him by his injuries, should take into account large and comparatively permanent changes in the real value, ie in the purchasing power, of money. If one tries to assess an award for personal injuries today, and looks for guidance to an award made twenty years ago in a comparable case, the decline in the real value of money must be taken into account. The matter does not rest only on common sense and principle. There is considerable authority for this proposition. In *Wharton v. Sweeney* 105 SJ 887, Ormerod LJ referred to the question in these words:

> It is well that there should be some consistency, and the amounts awarded in the past are a useful and general guide – bearing in mind the variation of circumstances and bearing in mind too and this is important – the changes in the value of money over the years.

And in *Aiken v. Port of London Authority* [1963] 1 LI Rep 44, Willmer LJ said:

> Our attention was drawn to other cases where this court has had to deal with similar injuries sustained. They were mostly cases decided some ten or twelve years ago ... As was pointed out by Mr. Marven Everett, some allowance has to be made for the fall in the value of money since

these cases were decided. He might, I think, have gone on to observe that in any damages awarded now allowance should be made for the possibility that the value of money may continue to fall in the future.

In *Sands v. Devan* [1945] SC 380, Lord Normand said:

> "Since we must perforce measure the damage in money, we must, I think, take account of large and relatively permanent variations in the value of money." And Lord Moncriff added, "As regards what falls to be paid in money the court must take note of changes in the value of money."

It would be extremely difficult, if not, impossible, for a judge to assess proper damages without some guidance from past cases and the principle of having regard to awards in comparable cases has been approved by the House of Lords in *H West & Son, Ltd v. Shephard* [1964] AC 326, and also by the Privy Council in *Jag Singh v. Toong Fong Omnibus Co, Ltd* [1964] MLJ 463. It is therefore *imperative that where an old comparable case is considered, there should be an adjustment for the change in the value of money which should be reflected in the award.* The difficulty always is in ascertaining the change or the comparative value of money at two different dates several years apart. In this connection it is futile to refer to the fall in the purchasing power of the English pound. As was pointed out by the Judicial Committee in *Jag Singh v. Toong Fong Omnibus Co., Ltd., supra,* comparisons should be made with cases "in the same jurisdiction or in a neighbouring locality where similar social, economic and industrial conditions exist." The economic conditions in England and Singapore are vastly different. Unlike England, there is no inflation in Singapore or for that matter in Malaysia. Furthermore, wages in England of the working class have been consistently on the rise whereas in Singapore there has been no general revision of salaries for a very long time. A government committee appointed last year to consider the matter recommended an increase of wages of only eight per cent. (emphasis added)

[35] This court therefore held that the quantum of RM60,000 as awarded by the trial judge is adequate and in the circumstances is not excessive as per the injuries suffered. The quantum is based on 100% liability.

[36] The appeal as regard to quantum is therefore dismissed.

[37] In the circumstances, there is no order as to costs, however the appeal deposit is hereby returned to the appellant.